



Human Security, State Security and the Charter of the United Nations

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Abstract:

Although the latter half of the twentieth century has seen a push towards a more human centered idea of security, some commentators have argued that many segments of international law are nonetheless firmly rooted in the traditional, state-centric approach. This essay will examine the premier piece of international legislation, the Charter of the United Nations, and inquire as to whether it is able to reconcile these two distinct conceptions of security. It will open by discussing the evolution of the security paradigm, contrasting human and state-security. It will subsequently shift into an analysis of the principles of security embedded in the opening two chapters of the UN Charter, and argue that there is in fact a basis on which to protect human security – one which does not conflict with the fundamental principles of state security. A survey of the role of the United Nations Security Council will ensue, and before concluding, the essay will briefly examine the case of East Timor – an excellent example of UN-sponsored enforcement of human security.

Résumé :

Bien que la seconde moitié du vingtième siècle ait vu une conception de sécurité de plus en plus concentrée sur les personnes, certains commentateurs ont fait valoir que plusieurs segments du droit international sont néanmoins fermement ancrés dans l'approche classique centrée sur l'état. Cet essai examine la législation internationale, la Charte des Nations Unies, et demande s'il est possible de concilier ces deux conceptions distinctes de la sécurité. L'essai commence en discutant de l'évolution du paradigme de sécurité en contrastant la conception humaine et la conception étatique. Il contient ensuite une analyse des principes de sécurité incorporés dans les deux premiers chapitres de la Charte des Nations Unies. Il fait valoir qu'il existe un fondement pour la protection de la sécurité des personnes qui ne s'oppose pas aux principes fondamentaux de sécurité d'un état. Une enquête sur le rôle du Conseil de sécurité des Nations Unies précède l'examen du cas du Timor oriental ; un exemple excellent de l'application de la sécurité humaine de l'ONU.

“The demands we face also reflect a growing consensus that collective security can no longer be narrowly defined as the absence of armed conflict, be it between or within States. Gross abuses of human rights, the large-scale displacement of civilian populations, international terrorism, the AIDS pandemic, drug and arms trafficking and environmental disasters present a direct threat to human security, forcing us to adopt a much more coordinated approach to a range of issues” -Kofi Annan¹

Section One: Introduction

The above quote by Kofi Annan is symbolic of a wider push, both from within and outside the United Nations, for a shift from a state-based understanding of security towards a more human-centric approach. New initiatives, regimes and international bodies (in particular, the UN and its specialized agencies) are taking a more active role in ensuring that the well-being of humans is guaranteed, and as such, have been working to alleviate poverty, crime, hunger, illness and environmental degradation.

As the foundation of a new, post-war era and the framework treaty for the United Nations, the Charter is one of the fundamental pieces of international legislation that shapes global action with respect to security. This study will thus have, as its central goal, an analysis of whether a normative base of human security can be found in the UN Charter – a document widely understood to be rooted in the traditional understanding of security.² After exploring the norms and principles embedded within the Charter, as well as their application, this essay will posit that the Charter does, in fact, have a normative base for the application of human security – one which conceptually coexists with the norms embedded in the traditional, state-centric model of security.

¹ Kofi Annan, “Report of the Secretary-General on the Work of the Organization” UN General Assembly, Official Records, Fifty-fifth session Supplement No.1 - A/55/1 (New York: United Nations, 2000), 4.

² The basis of this understanding is an emphasis on territorial sovereignty and non-interference. For more information on this notion, see: Hans Kelsen, “Collective Security and Collective Self-Defence under the Charter of the United Nations”, *American Journal of International Law*, Vol. 42 (1948). Also see: Astri Suhrke, “Human Security and the Interests of States”, *Security Dialogue*, Vol. 30, No. 3 (1999): 265-276.

Section Two: From State Security to Human Security, Evolution of a Concept

Security, in its most fundamental sense, can be understood as “the confidence in one’s safety or well-being”, which involves being free from threats that would put one’s life in danger.³ The traditional lens by which scholars have analyzed security is through the state, and thus, a threat to security is perceived as something that puts the state itself in danger. This narrow, traditional conceptualization has its roots in antiquity, but has been shaped predominantly by the Westphalian notions of sovereignty and inviolability, emerging out of the assumption that the state holds the primary responsibility to protect its citizens.⁴ In this system, the individual has “no obvious place...except (in the sense of realism) in the role that leaders may play in the pursuit of power for their state”.⁵ Security, under this view, is thus achieved primarily through military means and was the predominant view throughout the Cold War period.

However, as Nicholas Thomas and William Tow indicate, “a ‘secure state’, untroubled by contested territorial boundaries could still be inhabited by insecure people”, if we were to re-organize and modernize our understanding of security, recognizing that threats may not only come via the state, but instead, may manifest themselves directly onto individuals.⁶ Ramesh Thakur adds that “when rape is used as an instrument of war and ethnic ‘purification’, when thousands are killed by floods resulting from ravaged countryside and when citizens are killed by their own security forces, then the concept of national security is immaterial”.⁷ Such threats may

³ Oxford English Dictionary, s.v. “security”, accessed March 7/2014.

⁴ For more information about the traditional state-centric model of security, see: Gary King and Christopher L.J. Murray, “Rethinking Human Security”, *Political Science Quarterly*, Vol. 116, No. 4 (Winter 2001): 585-610.

⁵ Seth MacFarlane and Yuen Foong Khong, *Human Security and the United Nations* (Bloomington and Indianapolis: Indiana University Press, 2006), 46.

⁶ Nicholas Thomas & William Tow, “The Utility of Human Security: Sovereignty and Humanitarian Intervention”, *Security Dialogue* Vol. 33 No. 2 (June 2002), 178.

⁷ Ramesh Thakur, “The United Nations and Human Security”, *Canadian Foreign Policy Journal*, Vol. 7, No. 1 (1999), 55.

include poverty, disease, famine, environmental degradation, gendered violence and oppression of human rights.

The international community consequently re-organized its understanding of the concept of security, primarily throughout the latter half of the twentieth century. New regimes of peace were being established – namely the United Nations – and great power war was becoming decreasingly less of a threat to states, especially after the Second World War and the Cold War. Moreover, the international community began to identify new threats that did not necessarily challenge the security of the state, but rather the security of the *individual*. The United Nations Development Report of 1994 has been a leading document in this paradigm shift, and has re-interpreted “security” as being a *people-centric* concept, concerned with “how people live and breathe in society, how freely they exercise their many choices, how much access they have to market and social opportunities, and whether they live in peace or conflict”.⁸ It is thus a much broader concept than state-security, and encompasses a variety of different threats to the person, including famine, poverty, natural disaster, food shortages and climate change.

Section Three: Security in Principal, The Objectives, Structure and Principles of the UN

A Normative Base?

The Charter of the United Nations – the framework treaty, which organizes and structures the institution – came into being in 1945, at the conclusion of the United Nations Conference on International Organization in San Francisco.⁹ The multilateral treaty, which has been signed and ratified by one hundred and ninety-three parties, understands the main purposes of the institution

⁸ The United Nations Development Programme, Human Development Report 1994 (Oxford and New York: Oxford University Press, 1994), 23.

⁹ This essay makes frequent reference to the Charter of the United Nations. All subsequent discussion of “the (UN) Charter” refers to the following source: United Nations, Charter of the United Nations, 24 October 1945, United Nations Treaty Series XVI [UN Charter].

to be peace and security, and the Charter is structured in such a way so that it can achieve both of these objectives.

The Charter is informed by a number of principles, outlined in Chapter I, which serve as the interpretive guide by which the rest of the provisions are to be understood. By looking at these principles, we see a general inclination towards the state-centric model of security. In fact, the very first articles in the Charter highlights that the understanding of peace and security revolves around the state, and is attained (for the most part) when cross border conflict is prevented. The principles of sovereign equality, territorial integrity, and non-interference in internal matters all highlight the assumption that if states are not engaged in transnational armed conflict, and respect the integrity of all other states, security can be attained.¹⁰

However, as Hans Corell points out in his address to the Canadian Council of International Law, “these provisions cannot be read in isolation from other provisions of the Charter”, since a fundamental normative base for human security can nonetheless be found within it.¹¹ The treaty’s pre-amble highlights the need to “reaffirm faith in fundamental human rights, the dignity and worth of the human person, [and] the equal rights of men and women”.¹² Article 1(3) of the Charter further reaffirms this commitment to humans, stating that one of the purposes of the United Nations is:

To achieve international cooperation in solving international problems of an economic, social, cultural or humanitarian character, and in promoting and encouraging respect for human rights and for fundamental freedoms for all without distinction as to race, sex, language or religion.¹³

¹⁰ Gerd Oberleitner, “Human Security; A Challenge to International Law?”, *Global Governance*, Vol. 11 (2005), 191.

¹¹ Hans Corell, “From Territorial Sovereignty to Human Security”, address to the Canadian Council of International Law (1999 Annual Conference, Ottawa).

¹² UN Charter [supra at note 9], preamble.

¹³ Ibid, art 1(3).

This principle shows the way in which the framers of this new international constitution have not neglected the importance of the individual's security and access to human rights. By moving beyond a strictly militaristic view of "international problems," this article identifies a set of alternative threats to peace and security, and calls on states to cooperate in solving them. Article 7(1) addresses this, by calling into existence the United Nations Economic and Social Council (or rather ECOSOC), a principle organ which works towards ensuring human security by making policy recommendations to the UN institution "with respect to economic, social, cultural, educational, health, and related matters."¹⁴

This new appreciation for the individual stemmed in part from the particularly devastating experience of World War II. The architects of this new constitutional order recognized that the oppression of rights and economic hardship had been among the key reasons for which the world had gone to war, and took steps to make sure that the UN would recognize the danger that both present to peace and security.

Reconciling the Principles of State Sovereignty and Human Security

We can thus conclude that, although there are a set of principles that are centred on state-security, a normative base that structures our conceptualization of human security does exist within the principles and framework of the UN Charter. However, from this analysis emerges a new question of compatibility; can human security be guaranteed in a system that enforces the principles of non-intervention and sovereign territoriality? On the surface, it may seem as if they are incompatible, since the latter is the normative foundation of state-security within the Charter. When we examine the way the Charter is structured, however, it becomes apparent that territorial

¹⁴ Ibid, art 7(1).

integrity and human security are not contradictory, and may in fact coexist and complement one another.

Hans Corell offers insight into the theoretical links between these two concepts by arguing that over time, the concept of sovereignty has evolved to encompass the needs of the citizens. He explains that the idea of sovereignty is “no longer designed to protect a sovereign”, and has instead evolved into “a concept for the protections of people”, since “a society that cannot protect the individual cannot protect the collectivity either”.¹⁵ In other words, it highlights that sovereignty now has a clear link to individuals, and a state which declares itself sovereign over a territory and group of people now assumes new responsibilities with regards to these groups.

The UN Charter highlights one of the central responsibilities of sovereign states in Chapter XI. Article 56, in particular, calls on all member-states to “pledge themselves to take joint and separate action in cooperation with the organization for the achievement of the purposes set forth in Article 55”¹⁶ – purposes which include a higher standard of living, respect for universal human rights and solutions to health, economic and social problems. What this means concretely is that the state itself has a responsibility and a requirement to ensure that all humans within its borders are living in security, and Article 55 reminds us that these principles are “necessary for peaceful and friendly relations among nations”.¹⁷ With this in mind, and so long as sovereign states acquit themselves of their duties towards their citizens and comply with these articles, human security can be guaranteed while respecting the state’s right to exclusive competence. This is reaffirmed in the UN General Assembly Resolution 46/182 (1991), which states that “the sovereignty, territorial integrity and national unity of States must be fully respected in accordance with the Charter of the United Nations”, while noting that “the State has

¹⁵ Corell, “From Territorial Sovereignty to Human Security” [supra at note 11].

¹⁶ UN Charter, [supra at note 9], art 56.

¹⁷ Ibid, art 55.

the primary role in the initiation, organization, coordination, and implementation of humanitarian assistance within its territory”.¹⁸

Section Four: Humanitarian Intervention Under the Charter, the UN Security Council

The above discussion has indicated that the norms of territorial integrity and human security can, in principle, be applied simultaneously, so long as the state fulfills its responsibilities and works towards the protection and well-being of its citizens. Although several authors agree with this, it has still been argued that the idea of human security is “interventionist by nature”.¹⁹ MacFarlane and Khong posit that the Charter encapsulates an emerging set of norms “that might justify derogation of state sovereignty in pursuit of human security,”²⁰ and Thakur argues that “human security... contends that the international community has not just the right, but indeed, the duty to intervene under some circumstances.”²¹

The reason behind this justification is that, in spite of its obligations in international law (under the Charter and other international legal regulations), states do not always work to ensure the security of the individual. This may be the result of a lack of will (for example, a state that deliberately oppresses the human rights of its citizens), or a lack of ability (for example, a state that is unable to provide medical care for the population suffering from an epidemic). Furthermore, in many such instances, insecurity can spill over the state's borders, and become international in its scope. In these cases, the principles of human security require intervention in order to guarantee security at both the individual, national and international levels.

¹⁸ UN General Assembly Resolution 46/182 (1991) “Strengthening of the coordination of humanitarian emergency assistance of the United Nations”.

¹⁹ Oberleitner, “Human Security; A Challenge to International Law?” [supra at note 10], 194.

²⁰ MacFarlane and Foong Khong, Human Security and the United Nations [supra at note 5], 105.

²¹ Thakur, “The United Nations and Human Security” [supra at note 7], 52.

The discussion thus far may, however, seem paradoxical; how could it be that human security can, at the same time, be in conformity with the principle of territorial sovereignty and also possibly entail the necessity for intervention for humanitarian purposes? The following analysis will examine this paradox with regards to the provisions of the Charter and the UN Security Council.

Humanitarian intervention is, by nature, a contentious topic. Sean Murphy defines the concept as “the threat or use of force by a state, group of states or international organization primarily for the purpose of protecting the nationals of the target state from wide-spread deprivations of internationally recognized human rights”.²² For the most part, however, the UN Charter does not include unilateral humanitarian intervention as an exception to Article 2(4), which prohibits “the threat or use of force against the territorial integrity or political independence of any state.”²³ Furthermore, international customary law does not permit unilateral humanitarian intervention either; this is evident under the International Court of Justice’s decision in the *Nicaragua v. United States* case.²⁴

Before continuing, it is important to expand on the idea of why territorial sovereignty and the principle of non-intervention (which are inextricably linked) have been affirmed and reified under the UN Charter. As Antonio Cassese points out, it was the “need to avert armed conflict likely to endanger the very survival of mankind [that] prompted the international community to

²² Sean D. Murphy, *Humanitarian Intervention: The United Nations in an Evolving World Order* (Philadelphia: University of Philadelphia Press, 1996), pp.11-12. It is important to note that intervention, under this widely-accepted definition, is more-or-less involuntary, in that the state in which the forces intervene hasn’t necessarily welcomed the intervening state. Assistance that comes under the request of a state in crisis (take Haiti after the earthquake, for example) cannot be considered intervention.

²³ As will be discussed later in the essay, the only way that humanitarian intervention may be permitted under the UN Charter is if it is conducted under the auspice of and with the permission from the UN Security Council.

²⁴ Both Ryan Goodman and Ian Brownlie underscore this in their respective texts. See: Ryan Goodman, “Humanitarian Intervention and Pretexts for War”, *The American Journal of International Law*, Vol. 100 (2006), 111 and Ian Brownlie, “International Law and the Use of Force by States Revisited”, *Australian Year Book of International Law*, Vol. 21 (2000), 21-22.

take [the] step” towards prohibiting the use of force.²⁵ The norm – in conjunction with Article 2(7) – also protects states from unwanted intervention in internal matters from other states, and was heavily backed by the “third world,” which saw it as protection against neo-colonial endeavours from the powerful states.²⁶

The above discussion may appear as if the UN Charter is rather negative, in that it “limit[s] the possibility of forceful international action to protect civilians when the circumstances of their suffering [falls] within the expansive and ill-defined parameters of domestic jurisdiction.”²⁷ However, the UN Charter was framed in such a way as to permit certain exceptions to Article 2(4) – namely, self defence (under Article 51), and collective security through the United Nations Security Council (under Chapter 7). These are the only two exceptions to Article 2(4), which effectively means that unilateral humanitarian intervention is illegal under the Charter. The latter exception, however, is most relevant to this discussion.

The UN Security Council (or the “UNSC”) is one of the six organs of the UN Organization, and has, as its primary duty, the maintenance of peace and security at the international level. For this reason, it is granted a series of rights and obligations under the Charter – most notably in Chapter 7. Article 39 bestows upon the UNSC the responsibility of “determin[ing] the existence of any threat to peace, breach of the peace, or act of aggression”, while the subsequent articles – namely articles 41 and 42 – allow the UN to determine how it will deal with such a threat, and vests it with the (implicit) legal authorization to use force against a state.²⁸ Thus, to put it simply, the Charter grants the Security Council the ability to determine

²⁵ Antonio Cassese, *International Law*, 2nd ed (Oxford and New York: Oxford University Press, 2005), 56.

²⁶ MacFarlane and Foong Khong, *Human Security and the United Nations* [supra at note 5], 87.

²⁷ Ibid.

²⁸ The term “implicit” is used, because the Charter does explicitly sanction the use of force under the auspice of the UNSC; instead, they suggest the use of “demonstrations, blockade[s] and other operations by air, sea or land forces”, should the non-forceful tactics under 41 “prove to be inadequate”. Jurists have, however, interpreted these articles

that a matter of human security is of pressing concern to the international order, consequently, is permitted legally to intervene for humanitarian purposes. In other words, the UNSC is the institution able to reconcile the necessity of humanitarian intervention and the principles associated with sovereign territoriality.

Section Five: UN Security Council and Human Security in East Timor

The above discussion constitutes a highly theoretical analysis of the workings of the UN Charter and human security; for this reason, this section will have the aim of showing the way in which the UN Security Council put human security into action by studying the East Timor case.

East Timor is one of the many examples of decolonization gone wrong. Having formally declared independence from Portugal in 1975, the state was subsequently invaded by Indonesia only nine days later. The resulting struggle between the local Timorese and the invading Indonesians resulted in turmoil for East Timor; the twenty-four year “unsuccessful campaign of pacification” resulted in as many as 250,000 deaths, with 84,000 of them being directly attributable to hunger and disease.

In 1999, the conflict in East Timor reached its peak, and the United Nations Security Council could no longer ignore the grave humanitarian crisis. While “determining that the continuing situation in East Timor constitutes a threat to peace and security” and being “deeply concerned by the grave humanitarian situation resulting from violence in East Timor and the large-scale displacement and relocation of East Timorese civilians, including large numbers of women and children,”²⁹ the UNSC determined that intervention was necessary, and as such, Resolutions 1246, 1264 and 1272 (all in 1999) were unanimously enacted. The resolutions saw

to be sanctioning the use of force, especially since Article 2(7) says that the “principle[s] shall not prejudice the application and enforcement measures under Chapter VII.”

²⁹ United Nations Security Council – Resolution 1272 (1999) “On the situation in East Timor”.

the creation of the United Nations Transitional Administration in East Timor (UNTAET) – an organization tasked with the responsibility to oversee a universal election for the question of independence, and the INTERFET, a multilateral organization that was delegated by the UNSC to work towards solving the crisis through legal, administrative, military and humanitarian avenues. After violence escalated in 2000, the UNSC adopted Resolution 1319, which called on the Indonesians to cease arming rebel groups. The UNTAET also intervened to assist with political and refugee administration, peacekeeping, and humanitarian relief.

By 2002, East Timor had become a member of the United Nations, and stability had been restored. Although the mission was rocky and complex – somewhat unorganized involving many different groups and organizations – it is typically seen as a success. The case study shows that the United Nations framework does in fact allow the UN Security Council to make proper decisions (under Chapter VII) that would work towards improving the security of particular human beings in a conflict zone, should the member-states have the political will. In spite of the principles of non-intervention and sovereignty, the UNSC acted within its rights and obligations under international law to help the Timorese people gain independence from Indonesia and establish for themselves as a secure and safe living environment. Despite the fact that East Timor is still a rather impoverished state, its GDP is steadily on the rise, and is modernizing at a healthy rate. All of this goes to show that the Charter does in fact give states the ability to achieve human security for a particular people, all the while complying with other provisions and principles under the Charter.

Section Six: Conclusion

This essay has sought to show the way in which human security does find its base in the UN Charter. By analyzing the principles and objectives of the United Nations as an institution, we

see that there are, in fact, normative grounds for an understanding of security based on both the human and state dimensions. The former, which includes principles of territorial sovereignty and exclusive competence over internal matters, was further shown to be compatible with the principles of human security – which include economic, social and personal well-being – since it is the state which has the obligation of looking after the security and stability of the individual.

The essay subsequently shifted into a discussion of the paradox; that human security can be compatible with territorial integrity and sovereignty while being intrinsically connected to humanitarian intervention. The paper has shown that the UN Charter gives the Security Council the sole authorization³⁰ and duty to intervene in matters of concern to international peace and security, and counts an intervention from the UNSC as an exception to the prohibition of use of force and of interference in domestic matters. Given that humanitarian crises (with strong links to human insecurity) threaten international stability, the Security Council is both permitted and obliged to act in such cases, in accordance with international law.

In recent times, the UNSC has come under fire for being inefficient and unable to act in cases of humanitarian crisis – Rwanda being one of the many examples of the inability or unwillingness to act. This essay has sought to establish that this is not the fault of the framework of the Charter; the theoretical discussion, coupled with the case-study of East Timor has shown that the principles of human security and the privileges accorded to the UNSC make it possible for human security to be protected under the framework of the United Nations. In other words, we ought not blame the Charter for the misapplication of human security, since it is framed in a manner conducive to its application.

³⁰ Emphasis was placed on the words “sole”, to highlight the fact (as mentioned above) that unilateral humanitarian intervention is prohibited. It is, however, important to remember that the UNGA may have, in some cases, take action. A discussion on this matter is, however, beyond the scope of this essay.

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